GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:5378
ANSWERED ON:28.04.2000
APPLICATIONS FOR PATENTING
MOINUL HASSAN AHAMED

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government are aware of any application submitted for patenting the indigenous knowledge of our country either directly or indirectly;

(b) whether Articles 7 and 8 of TRIPS does not empower the Government use its sovereign power to reject such applications;

(c) whether the Government have used such powers and rejected a number of applications; and

(d) if so, the reasons therefor?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY(DR. RAMAN SINGH)

(a) : Patents in India are granted as per the provisions of the Patents Act, 1970, to inventions which are new, involve an inventive step and are industrially applicable. This Act does not provide for patenting of indigenous knowledge. Further, no application for patenting the indigenous knowledge is reported to have been filed with the Indian Patent Office.

(b) to (d): Articles 7 and 8 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) do not empower the Government to use its sovereign power to reject an application for patent on indigenous knowledge. Article 7 embodies the objectives of the TRIPs Agreement which inter-alia states that intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. These objectives are to be achieved by the intellectual property legislation, which are to be framed according to the provisions under the TRIPs Agreement. The power of the Government comes through the legislation enacted in respect of the intellectual property concerned.

Article 8 embodies the principles on which the TRIPs Agreement is based. It gives power to the member country to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development within the framework of the other provisions of the TRIPs Agreement. The TRIPs Agreement also provides power to adopt appropriate measures to prevent abuse of intellectual property rights. These principles can be incorporated as provisions for using the patent in national interest without authorization of the right holder.